

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sonia Landino	Team: Squad #6	CCRB Case #: 201508536	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 09/29/2015 4:49 PM	Location of Incident: § 87(2)(b) § 87(2)(b)	Precinct: 106	18 Mo. SOL 3/29/2017	EO SOL 3/29/2017	
Date/Time CV Reported Thu, 10/01/2015 4:40 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 10/08/2015 12:27 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. An officer			106 PCT
2. Officers			106 PCT
3. POM Bennett Choi	29727	950207	106 PCT
4. POM Frank Talio	13874	945043	106 PCT
5. POM Matthew Peters	25160	934461	106 PCT
6. SGT Joseph Dean	00003	932535	106 PCT

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Abuse: Officers entered § 87(2)(b) of § 87(2)(b) in Queens.	§ 87(2)(b)
B. POM Bennett Choi	Force: PO Bennett Choi struck § 87(2)(b) with an asp.	§ 87(2)(b)
C. Officers	Force: Officers used a chokehold against § 87(2)(b)	§ 87(2)(b)
D. An officer	Force: An officer restricted § 87(2)(b)'s breathing.	§ 87(2)(b)
E. SGT Joseph Dean	Abuse: Sgt. Joseph Dean threatened § 87(2)(b) with the use of a Taser.	§ 87(2)(b)
F. POM Frank Talio	Force: PO Frank Talio used physical force against § 87(2)(b)	§ 87(2)(b)
G. POM Matthew Peters	Force: PO Matthew Peters used physical force against § 87(2)(b)	§ 87(2)(b)
H. POM Bennett Choi	Force: PO Bennett Choi used physical force against § 87(2)(b)	§ 87(2)(b)
I. SGT Joseph Dean	Discourtesy: Sgt. Joseph Dean spoke discourteously to § 87(2)(b)	§ 87(2)(b)
J. POM Bennett Choi	Discourtesy: PO Bennett Choi spoke discourteously to § 87(2)(b)	§ 87(2)(b)
K. POM Matthew Peters	Discourtesy: PO Matthew Peters spoke discourteously to § 87(2)(b)	§ 87(2)(b)
L. POM Frank Talio	Discourtesy: PO Frank Talio spoke discourteously to § 87(2)(b)	§ 87(2)(b)
M. POM Matthew Peters	Abuse: PO Matthew Peters searched § 87(2)(b) of § 87(2)(b) in Queens.	§ 87(2)(b)
N. An officer	Abuse: An officer threatened § 87(2)(b) with the use of force.	§ 87(2)(b)

Case Summary

This case exceeded the 90-day benchmark due to delays in receiving NYPD documents and officer identification issues.

On October 1, 2015, § 87(2)(b) filed this complaint via phone with the Internal Affairs Bureau, generating IAB Log No. 15-29478 (BR01). The complaint was received by the CCRB on October 8, 2015. On October 2, 2015, § 87(2)(b) filed a second complaint for the same incident via phone with the Internal Affairs Bureau, generating IAB Log No. 15-29525 (BR02). The second complaint was received by the CCRB on October 10, 2015.

On September 28, 2015, at approximately 4:49 p.m., § 87(2)(b) called 911 to report his money and cameras were stolen from within his home located at § 87(2)(b) in Queens. § 87(2)(b) lives on the first floor of a two-story home while his unidentified landlord lives in the apartment above his. Soon after § 87(2)(b) called 911, PO Bennett Choi, PO Frank Talio, PO Matthew Peters, and Sgt. Joseph Dean of the 106th Precinct arrived at § 87(2)(b)'s home. Once § 87(2)(b) informed the officers that his money and cameras were stolen, the officers went upstairs to the unidentified landlord's apartment to review video footage since video cameras were placed on the exterior of the home. After the officers spoke with § 87(2)(b)'s unidentified landlord, § 87(2)(b) was asked to open his door for the officers, but § 87(2)(b) refused to do so. § 87(2)(b) eventually opened his door after refusing to do so multiple times and an unidentified officer allegedly pushed the door completely open allowing PO Choi, PO Talio, PO Peters and Sgt. Dean to enter the apartment (**Allegation A**).

§ 87(2)(b) was informed that he would be leaving with the officers, but § 87(2)(b) verbally refused to go anywhere with the officers since they did not file a report for the robbery. § 87(2)(b) was directed to turn around, but when he did not comply with the directive, PO Choi allegedly struck § 87(2)(b)'s right shin twice with an asp (**Allegation B**). As § 87(2)(b) was attempting to get up from the ground, three unidentified officers grabbed various parts of § 87(2)(b)'s body in an effort to restrain him back down on the ground. One of the unidentified officers allegedly placed § 87(2)(b) in a chokehold for approximately fifteen to twenty minutes and § 87(2)(b) could not breathe for the entire duration of the chokehold (**Allegation C** and **Allegation D**). When § 87(2)(b) yelled out that he could not breathe and continued to struggle against the officers, an unidentified officer allegedly sat on the back of § 87(2)(b)'s neck, placed his hands around § 87(2)(b)'s neck, and lifted § 87(2)(b)'s head backwards (**within Allegation C**). Sgt. Dean then allegedly pointed a Taser at § 87(2)(b) and informed him that if he continued to struggle he would be Tasered (**Allegation E**).

After speaking with the unidentified landlord a second time, Sgt. Dean informed § 87(2)(b) that he was going to the "nutcracker house." After § 87(2)(b) was restrained on the ground for approximately forty-five minutes, PO Talio, PO Peters, and PO Choi allegedly began dragging § 87(2)(b) on the ground towards the apartment's front door and PO Choi allegedly kicked § 87(2)(b) twice on the back of his head near his left ear. (**Allegation F, Allegation G, and Allegation H**). The officers picked § 87(2)(b) up from the ground and began walking him to an ambulance.

Throughout the incident, § 87(2)(b) alleged that Sgt. Dean, PO Choi, PO Peters, and PO Talio made numerous discourteous statements towards him (**Allegation I, Allegation J, Allegation K, and Allegation L**). Before § 87(2)(b) was transported to § 87(2)(b) Hospital, PO Peters allegedly searched inside § 87(2)(b)'s home (**Allegation M**).

§ 87(2)(b) was transported to § 87(2)(b) Hospital in Queens and remained at the hospital for the following three days after the incident. At an unknown time during § 87(2)(b)'s hospital stay, an unidentified officer threatened § 87(2)(b) with the use of force if he filed a complaint with the Internal Affairs Bureau (**Allegation N**).

§ 87(2)(b) was not arrested or summonsed as a result of this incident.

There is no video footage of the incident.

Mediation, Civil and Criminal Histories

- On October 19, 2015, § 87(2)(b) rejected mediation during his CCRB interview because he is pursuing a lawsuit against the 106th Precinct.
- As of March 3, 2016, § 87(2)(b) has not filed a Notice of Claim with the New York City Office of the Comptroller with regard to the incident (BR03).
- § 87(2)(b)
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Civilian and Officer CCRB Histories

- Sgt. Dean has been a member of the service for 12 years and has 7 CCRB allegations, none of which have been substantiated. In case number 200612224, a discourtesy allegation was unsubstantiated. In case number 200613804, an entry and search allegation was closed as victim uncooperative. In case number 201406476, the use of a Taser was exonerated.
 - In case number 201601641, allegations of threat of arrest and refusal to process a civilian complaint are currently being investigated.
- PO Peters has been a member of the service for 11 years and has 12 CCRB allegations, none of which have been substantiated. In case number 200903672, a discourtesy was closed as complainant uncooperative. In case number 201214426, allegations of physical force and discourtesy were unsubstantiated.
- This is the first CCRB complaint filed against PO Choi during his 4 year tenure.
- This is the first CCRB complaint filed against PO Talio during his 8 year tenure.
- § 87(2)(b)
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§ 87(2)(b)

- § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED]

Potential Issues

- Although § 87(2)(b) [REDACTED] and the officers acknowledged the presence of video cameras on the home's exterior, the video footage would not have been useful since the allegations in question occurred inside § 87(2)(b) [REDACTED]'s apartment, aside from the threat of force at the hospital.
- § 87(2)(b) [REDACTED] indicated that he saw many of his neighbors standing outside as he was escorted to the ambulance. Since the allegations in question occurred inside § 87(2)(b) [REDACTED]'s apartment, a canvas for witnesses was not done.

§ 87(2)(b), § 87(2)(g)

- [REDACTED]
- [REDACTED]

§ 87(2)(b), § 87(2)(g)

- § 87(2)(b), § 87(2)(g)

- § 87(2)(b), § 87(2)(g)

Medical Records

- When § 87(2)(b) filed his § 87(2)(b) complaint with IAB, he alleged being thrown on the ground and an officer kicked his back. In his CCRB phone statement, § 87(2)(b) alleged being tackled to the ground and was kicked twice in the head. During his sworn CCRB statement, § 87(2)(b) alleged being struck twice with an asp, placed in a chokehold twice, unable to breathe for approximately fifteen minutes, dragged ten feet on the ground, and kicked twice on the back of his head. However, the only injuries § 87(2)(b) alleged he sustained were pinched nerves from his right torso down through his right leg, pain from his left torso through his left arm, and neck pain. He stated that he was x-rayed and given a neck brace, but was not provided any medicine during his stay at § 87(2)(b) Hospital. Although § 87(2)(b) alleged numerous physical force allegations, he never indicated sustaining any bruising, swelling, abrasions, or loss of consciousness as a result of the incident.
- On November 10, 2015, § 87(2)(b)'s medical records from § 87(2)(b) Hospital were received and summarized for this incident (BR09). § 87(2)(b)
- In the Prehospital Care Report, the responding emergency medical technicians indicated that upon their arrival at the incident location at approximately 6:30 p.m., § 87(2)(b) was complaining that someone had stolen his money. The officers informed the EMTs that § 87(2)(b) was hallucinating and no one had stolen his money. The EMTs noted § 87(2)(b)'s appearance as normal with no visible injuries, his breathing was normal and unlabored, and his chief complaint was, "Someone stole my money." § 87(2)(b) denied dizziness, headaches, and nausea to the responding EMTs (see 01 Privileged Medical Documents).
- § 87(2)(b) Hospital's Emergency Department documentation notes § 87(2)(b)'s arrival complaint as, "Hallucinating, states people are in his apartment taking his monies." The medical records state § 87(2)(b) arrived at the hospital with symptoms of paranoia and delusions, that he alleged his landlord stole his money; he was being targeted by crack addicts, and will be suing the police again. Aside from appearing slightly disheveled, no

injuries were documented and § 87(2)(b) made no claims that officers used physical force against him (see 02 Privileged Medical Documents).

- § 87(2)(b) told the medical personnel at § 87(2)(b) Hospital that he will be suing the police again and he stated numerous times during his CCRB sworn statement that he has been trying to sue the police for some time now. § 87(2)(b), § 87(2)(g)

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NYPD Documents

Documents were obtained from the 106th Precinct.

- In IAB Log No. 15-29478, § 87(2)(b) called IAB on October 1, 2015 to report he called 911 at 9:30 p.m. on the incident date to request police assistance because his apartment had been burglarized and he was missing \$500 USD and two cameras. “PO Mitchell” and a short, white male officer responded in RMP 2249 and RMP 8651. The officers allegedly told § 87(2)(b) they were “not taking any fucking report” and “PO Mitchell” told § 87(2)(b) “Get your ass back inside.” § 87(2)(b) disconnected the phone call and did not respond to the IAB investigator’s subsequent contact attempt. An NYPD database search yielded negative results for a “PO Mitchell” and RMP 2249, while revealing RMP 8651 was assigned to the 111th Precinct. The IAB investigator noted § 87(2)(b) had 27 IAB logs for various reasons and is a chronic caller (BR01).
- In IAB Log No. 15-29525, § 87(2)(b) called IAB on October 2, 2015 to report that he called 911 on the incident date because his landlord stole items in his home and when officers responded, they threw him on the ground. He also alleged a sergeant, with shield number 419, kicked him on his back and § 87(2)(b) was transported by EMS to § 87(2)(b) Hospital. § 87(2)(b) disconnected the IAB phone call again. NYPD database searches yielded negative results for a sergeant with shield number 419 at the 106th Precinct (BR02).
- An Event Index for § 87(2)(b)’s home address revealed that from July 3, 2015 to January 12, 2016, § 87(2)(b) called 911 for various complaints 356 times. Most of the complaints were for disputes with § 87(2)(b)’s landlord, specifically illegal evictions, threats, and burglaries that were marked as unnecessary, unfounded, or non-crime corrected. The Event Index also reveals that § 87(2)(b) has called 911 multiple times per day regarding the same type of complaints (BR10).
 - On the incident date, § 87(2)(b) made 30 phone calls to 911 beginning at 1:12 a.m. until 5:17 p.m. with Patrol Sectors A and D responding. Many of the events were closed as duplicates.
- Event Summary § 87(2)(b) was created at 4:55 p.m. when § 87(2)(b) called 911 reporting that his landlord had stolen \$500 USD and a camera from within his home. The 911 Operator noted § 87(2)(b) was a chronic caller and Patrol Sector A marked the job as unnecessary. At 5:04 p.m., the event was reopened due to IAB advising the 106th Precinct’s patrol sergeant to respond to the incident location. At 5:17 p.m., the 911 Operator advised the 106th Precinct’s lieutenant to respond over radio transmission. Patrol Sector B was first to arrive at § 87(2)(b)’s home, with the patrol sergeant arriving shortly thereafter. At 6 p.m.,

the event was updated to reflect an Emotionally-Disturbed Person at the incident location (BR11).

- The 106th Precinct's Tour 3 Roll Call reveals that Sgt. Dean was the patrol supervisor on duty at the time of this incident. PO Peters and PO Solomon were assigned Patrol Sectors A and C. PO Talio and PO Choi were assigned Patrol Sector B. PO Loparo and PO Ditaranto were assigned Patrol Sectors D, E, and K. Lt. Goldsborough was listed as the platoon commander, Lt. Leudesdorff as the desk officer, and Lt. Dipreta as the special operations lieutenant. PO Jaffe was listed as a lieutenant's operator (BR12).
- § 87(2)(b)'s AIDED Report filed by PO Talio notes that § 87(2)(b) has a prior EDP history, was hallucinating on the incident date, and was transported to § 87(2)(b) Hospital (BR13).

Findings and Recommendations

Explanation of Subject Officer Identification

In his phone statement, § 87(2)(b) stated that eight officers arrived entered his home, but only described four officers. In his CCRB statement, § 87(2)(b) initially stated four officers arrived at his home and then ten officers entered his home, but he only described seven officers. As noted in the Event Index, § 87(2)(b) made thirty 911 calls on the incident date which led him to interact with multiple officers during Tours 1-3. In regards to this incident, PO Choi, PO Talio, PO Peters, and Sgt. Dean's memo books place them at the incident location for this incident. PO Peters had responded to one of § 87(2)(b)'s earlier 911 calls on the incident date with PO Solomon, but he later became Sgt. Dean's operator. PO Choi was the only officer who indicated during his CCRB statement that additional officers responded to the incident. Specifically, PO Choi stated that he believed PO Rivera and PO Shackel may have responded to the incident as well, but they were only there to observe. PO Rivera and PO Shackel's presence at the incident location is not corroborated by any other interviewed officers and aside from PO Choi; none of the officers who were interviewed stated that additional officers responded to the incident. Furthermore, PO Rivera and PO Shackel were assigned to Conditions and would have been in plainclothes and § 87(2)(b) was specific in that all of the officers present during the incident were in uniform. Since the Event Summary listed the arrival of a lieutenant, PO Jaffe was interviewed as he was the only listed lieutenant's operator on the roll call. PO Jaffe was partnered with Lt. Goldsborough, who was the only patrol lieutenant on duty during Tour 3. PO Jaffe acknowledged overhearing the radio transmission requesting a lieutenant to respond to the incident location, but he stated Sgt. Dean responded instead and neither PO Jaffe nor Lt. Goldsborough responded to the incident location. Lt. Dipreta was also interviewed as he was the specials conditions lieutenant and his memo book and CCRB statement confirm he was not present at the incident location at any point during his tour. Due to § 87(2)(b), § 87(2)(g) and the fact that the Event Summary for this incident lists only the patrol sergeant and Patrol Sector B as the responding officers, the investigation did not interview any additional officers and determined that only PO Choi, PO Talio, PO Peters, and Sgt. Dean were present during this incident. As will be discussed in the Findings and Recommendations section, the aforementioned officers' entry into § 87(2)(b)'s home is exonerated. Therefore, **Allegation A** is pled against "Officers."

Once the officers entered § 87(2)(b)'s home, § 87(2)(b) identified a 5'10" tall, Asian male officer in his 40's with a thin build and grey hair as the officer who struck him with an asp. PO

Choi is a § 87(2)(b)-old, 5'10" tall Asian male who is 145-pounds and has black hair (BR14). PO Choi was the only Asian male amongst the officers who responded to the incident and his pedigree is a close match to § 87(2)(b)'s description. Therefore, **Allegation B** is pled against PO Choi.

§ 87(2)(b) described a 5'9" tall, § 87(2)(b)-old, white male officer who weighed between 155 and 175-pounds and had spiky hair as the officer who first placed him in a chokehold and restricted his breathing. He then described a 6-foot tall white male officer who weighed 320-pounds, had grey hair with shield number 296595 as the officer who placed him in a second chokehold. In his photo viewing, § 87(2)(b) identified PO Rivera and Lt. Goldsborough as the officers who placed him in the chokeholds. Since the investigation confirmed that PO Rivera and Lt. Goldsborough were not present for this incident and § 87(2)(b) indicated that the officers who placed him in a chokehold were not the Asian officer or the sergeant, then PO Talio and PO Peters would be the only other officers to be considered. PO Talio is a 5'7" tall, § 87(2)(b)-old white male who weighs 165-pounds and has brown hair (BR15). PO Matthews is a 6-foot tall, § 87(2)(b)-old white male who weighs 200-pounds and has brown hair (BR16). The fact that § 87(2)(b) provided two additional descriptions of officers that match the previous descriptions of officers who placed him in a chokehold, that he identified officers who were not present during the incident as the officers who placed him in a chokehold, and the interviewed officers' denial of placing § 87(2)(b) in a chokehold causes the investigation to be unable to identify the officers who allegedly placed § 87(2)(b) in a chokehold and restricted his breathing. As such, **Allegation C** is pled against "Officers" and **Allegation D** is pleaded against "An officer."

§ 87(2)(b) alleged that the sergeant had threatened him with the use of a Taser, but then identified PO Peters during his photo viewing as the officer who told him to listen to the sergeant and pointed the Taser at him. Sgt. Dean acknowledged having a Taser during the incident, but did not know if any other officer had a Taser as well. PO Choi, PO Talio, and PO Peters indicated that Sgt. Dean was the only officer who had a Taser during the incident. As such, **Allegation E** is pleaded against Sgt. Dean.

§ 87(2)(b) identified a 5'9" tall, § 87(2)(b)-old, white male officer who weighed between 155 and 175-pounds and had spiky hair as well as a 5'10" tall, § 87(2)(b)-old white male officer weighing 170-pounds with black hair and the last name of "Mitchell" as the officers who dragged him on the ground. § 87(2)(b) also identified the Asian male officer as having dragged him on the ground and kicked him in the head twice. § 87(2)(b) did not identify any officers during his photo viewing as having dragged him on the ground, but he did identify PO Choi as the officer who kicked him in the head. Since § 87(2)(b) did not identify Sgt. Dean as having participated in the drag and the only other officers present were PO Talio and PO Peters, in addition to PO Choi being the only Asian officer present, **Allegation F**, **Allegation G**, and **Allegation H** are pleaded against them.

In his CCRB statement, § 87(2)(b) identified a 6-foot tall, white male in his early-30's with brown hair, an average build, and shield number 4191 in uniform as the officer who used profanity against him. § 87(2)(b) identified this officer as the sergeant. Sgt. Dean is a § 87(2)(b)-old, 6'3" tall white male who is 200-pounds and has brown hair and blue eyes (BR17). Sgt. Dean was the only supervising officer who responded to this incident as per the interviewed officers'

statements. As such, **Allegation I** is pled against Sgt. Dean. § 87(2)(b) alleged the Asian male officer used profanity against him during the incident and as such, **Allegation J** is pled against PO Choi since he was the only Asian male present during the incident. § 87(2)(b) alleged additional discourtesies made by unidentified officers and since PO Peters and PO Talio were the only other officers present during the incident, **Allegation K** and **Allegation L** will be pleaded against them.

Although § 87(2)(b) only identified a 6-foot tall white male officer who weighed 320-pounds, had grey hair with shield number 296595 as the officer who searched inside his home, PO Peters acknowledged visually searching § 87(2)(b)'s home with Sgt. Dean, PO Choi, and PO Talio. PO Peters also acknowledged personally finding § 87(2)(b)'s house keys on a chair or a couch in the living room. PO Choi corroborated that a visual search was conducted, but stated that PO Peters also searched inside § 87(2)(b)'s bedroom. Since § 87(2)(b) identified only one officer who searched inside his home and PO Peters acknowledged physically searching the living room, **Allegation M** is pleaded solely against PO Peters.

§ 87(2)(b) alleged that the 6-foot tall white male officer who weighed 320-pounds, had grey hair with shield number 296595 had threatened him with the use of force if he called IAB and called him a “rat” at an unknown time during his hospital stay after the incident. During his photo viewing, § 87(2)(b) identified PO Shackel as the officer who went to the hospital and told the security officers to “fuck with him all night,” identified PO Talio as calling him a “rat” after § 87(2)(b) stated he was going to call IAB, and identified Lt. Dipreta as the officer who told him, “you’re a fucking rat to IAB.” Due to § 87(2)(b) conflicting and ever-changing statements and allegations and all of the officers’ denial of having made such statements to § 87(2)(b) **Allegation N** will be pled against “An officer.”

Allegations Not Pled

- **Force:** § 87(2)(b) alleged that PO Choi also dragged him on the ground before kicking him in the head twice. Since a force allegation has already been pled against PO Choi regarding the kick, an additional force allegation for the drag will not be pled and is subsumed in Allegation H against PO Choi.
- **Abuse of Authority:** PO Peters acknowledged being the only officer to physically search § 87(2)(b)'s apartment and stated that PO Choi, PO Talio, and Sgt. Dean only conducted a visual search. Since the visual search of § 87(2)(b)'s home after the officers had entered does not constitute misconduct in this case, a search allegation will not be pleaded against PO Choi, PO Talio, and Sgt. Dean.

Allegation A –Abuse of Authority: Officers entered § 87(2)(b) of § 87(2)(b) in Queens.

It is undisputed that PO Choi, PO Talio, PO Peters, and Sgt. Dean entered § 87(2)(b)'s home and transported him to § 87(2)(b) Hospital as an EDP on the incident date. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) confirmed he called 911 for police assistance after he realized his apartment had been burglarized. When the officers arrived, § 87(2)(b) informed them of what was stolen and the officers went to his unidentified landlord’s apartment to review video footage. When the officers

returned to § 87(2)(b)'s apartment and requested that he open his door, § 87(2)(b) refused to do so multiple times because the officers were not going to investigate his complaint. § 87(2)(b) finally opened his front door, but indicated that he did not step aside or provide consent for the officers to enter. Once § 87(2)(b) opened his door, the officers forcefully pushed the front door open and entered.

PO Choi, PO Talio, PO Peters, and Sgt. Dean corroborated that PO Choi and PO Talio were the first officers to arrive at § 87(2)(b)'s home. PO Choi and PO Talio corroborated that § 87(2)(b) had invited them inside his apartment so the officers could investigate the burglary he had called 911 about. Once Sgt. Dean and PO Peters arrived, Sgt. Dean first spoke with § 87(2)(b) through his screened front door. Sgt. Dean stated that he observed § 87(2)(b) pacing back and forth inside the apartment and heard him screaming. § 87(2)(b) eventually allowed the officers inside his apartment and Sgt. Dean spoke with § 87(2)(b) about what had happened. Sgt. Dean and PO Choi then went to speak with § 87(2)(b)'s unidentified landlord and reviewed video footage. Sgt. Dean and PO Choi stated that the burglary was not shown on the video footage and all they saw was § 87(2)(b) entering and exiting his apartment. Sgt. Dean stated that the unidentified landlord informed him that § 87(2)(b) was always causing problems and was crazy. When Sgt. Dean and PO Choi returned to § 87(2)(b)'s apartment, he opened his door and allowed all the officers to enter. None of the officers could exactly recall whether § 87(2)(b) verbally consented to the entry, but they corroborated that § 87(2)(b) never told the officers to leave his apartment. § 87(2)(b) was still pacing and screaming when the officers entered the apartment. When Sgt. Dean informed § 87(2)(b) that nothing was seen on the video footage and he was going to be transported to the hospital, § 87(2)(b) dropped himself to the ground. All of the officers corroborated that § 87(2)(b) seemed to be acting irrationally and was possibly hallucinating. Also, all of the officers knew § 87(2)(b) is a chronic caller.

§ 87(2)(b)'s 911 call was recorded in Event Summary § 87(2)(b) (BR11). The 911 dispatcher noted that § 87(2)(b) was irate, is a chronic caller, and advised the patrol sergeant to respond to § 87(2)(b)'s home after Patrol Sector A had deemed that there was no burglary at the location.

NYPD Patrol Guide Procedure 216-05 allows police officers to safeguard mentally ill or emotionally disturbed persons when they assess such person to require protective custody even if said person does not voluntarily seek medical assistance (BR19). An officer may enter a private residence in order to render emergency assistance to an injured occupant or protect an occupant from imminent injury. People v. Musto, 106 A.D.3d 1380 (App. Term, 3rd Dept. 2013) (BR18).

§ 87(2)(b), § 87(2)(g)
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§ 87(2)(b), § 87(2)(g)

Allegation B – Force: PO Bennett Choi struck § 87(2)(b) with an asp.

During his CCRB statement, § 87(2)(b) acknowledged that officers directed him twice to turn around and he did not comply with the directives. In response, Sgt. Dean allegedly made a gesture with his arms signaling the officers to “take § 87(2)(b) down.” PO Choi then allegedly grabbed § 87(2)(b) and struck his right shin twice with an asp causing § 87(2)(b) to fall to the ground. § 87(2)(b) described this action as PO Choi “flipping him onto the ground.”

PO Choi denied using his asp against § 87(2)(b) and stated that no other officers had their asps displayed at any time during the incident. PO Talio, PO Peters, and Sgt. Dean corroborated that no officers displayed or used their asps against § 87(2)(b) at any time during the incident.

§ 87(2)(b) did not allege that he was struck with an asp when he initially filed both complaints with IAB or during his CCRB phone statement, and did not identify PO Choi or any other officers as having used an asp against him during his photo viewing. Although § 87(2)(b) allegedly was struck with an asp twice on his right shin, he did not complain of this to the responding EMTs or the medical personnel at § 87(2)(b) Hospital. § 87(2)(b)'s medical records did not document any injuries as a result of the incident and specified § 87(2)(b)'s appearance was normal with no injuries.

§ 87(2)(b), § 87(2)(g)

Allegation C – Force: Officers used a chokehold against § 87(2)(b)

Allegation D – Force: An officer restricted § 87(2)(b)'s breathing.

During his CCRB statement, after PO Choi allegedly used his asp against § 87(2)(b) causing him to fall to the ground; § 87(2)(b) attempted to push himself up off the ground so an unidentified officer grabbed § 87(2)(b)'s neck in a “yoke” and attempted to bring § 87(2)(b) to the ground. The unidentified officer had his arms around § 87(2)(b)'s neck for approximately fifteen to twenty minutes before the officers were able to bring § 87(2)(b) to the ground. § 87(2)(b) allegedly could not breathe for the entire fifteen to twenty minutes that the unidentified officer had him in a chokehold. Although he could not breathe for fifteen to twenty minutes, § 87(2)(b) was able to yell out that he could not breathe and was still able to struggle against the officers. Due to § 87(2)(b)'s continual struggle against the officers, another unidentified officer sat on the back of § 87(2)(b)'s neck, placed both hands around § 87(2)(b)'s neck, and lifted § 87(2)(b)'s head backwards. § 87(2)(b)'s breathing was not restricted during this second chokehold.

PO Choi, PO Talio, PO Peters, and Sgt. Dean denied making contact with § 87(2)(b)'s neck, denied observing any other officer make contact with § 87(2)(b)'s neck, denied sitting or stepping on § 87(2)(b)'s neck, and did not recall hearing § 87(2)(b) make any statements about not being able to breathe during the incident.

§ 87(2)(b) did not allege that a chokehold was used even once against him during his two IAB complaints. In his CCRB phone statement, § 87(2)(b) only alleged that an unidentified officer sat on his neck, but made no indication that he was placed in a chokehold. During his photo viewing, § 87(2)(b) identified PO Rivera as the officer who placed him in a chokehold and sat on his back while on the ground and identified Lt. Goldsborough as the officer who pulled his head back while on the ground. As discussed above, PO Rivera and Lt. Goldsborough were not present during the incident, thus they could not have placed § 87(2)(b) in a chokehold. Although § 87(2)(b) alleged neck pain and receiving a neck brace from § 87(2)(b) Hospital during his CCRB statement, his medical records do not corroborate this and notes § 87(2)(b)'s airways and breathing as normal, clear, and unlabored. At the very least, § 87(2)(b) would have sustained some redness or swelling after being placed in a chokehold twice or straining to his pupils due to the lack of breathing, but his medical records do not list any complaints by § 87(2)(b) of being placed in a chokehold and do not document any bruising, redness, or pain around the neck. Furthermore, it is inconceivable that § 87(2)(b) was able to yell out that he could not breathe and continued to struggle against officers while he was placed in a chokehold for fifteen to twenty minutes without losing consciousness at any time.

§ 87(2)(b), § 87(2)(g)

Allegation E – Abuse of Authority: Sgt. Joseph Dean threatened § 87(2)(b) with the use of a Taser.

In both his CCRB phone statement and sworn statement, § 87(2)(b) acknowledged that he continually struggled against officers while he was on the ground. Due to § 87(2)(b)'s struggling, Sgt. Dean pointed his Taser at § 87(2)(b) and threatened to use the Taser against him if he kept resisting.

Sgt. Dean acknowledged having a Taser, but denied displaying his Taser and threatening § 87(2)(b) with the use of a Taser during the incident. PO Choi, PO Talio, and PO Peters corroborated that Sgt. Dean was the only officer who possessed a Taser during the incident. PO Choi did not believe Sgt. Dean displayed his Taser or threatened to use the Taser against § 87(2)(b) during the incident. PO Talio and PO Peters corroborated that Sgt. Dean did not display his Taser or threaten to use the Taser against § 87(2)(b) during the incident.

§ 87(2)(b) did not make this allegation during his initial two IAB complaints. During his photo viewing, § 87(2)(b) identified PO Peters as the officer who threatened him with the use of a Taser while directing § 87(2)(b) to listen to the sergeant, even though § 87(2)(b) indicated

during his CCRB phone statement and sworn statement that it was the sergeant who threatened him with the Taser. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b).

Allegation F – Force: PO Frank Talio used physical force against § 87(2)(b)

Allegation G – Force: PO Matthew Peters used physical force against § 87(2)(b)

Allegation H – Force: PO Bennett Choi used physical force against § 87(2)(b)

After § 87(2)(b) was allegedly subdued on the ground for approximately forty-five minutes, he alleged that PO Choi and two other unidentified officers, not including Sgt. Dean, grabbed his pants and dragged him on the ground approximately ten feet towards his apartment door. When § 87(2)(b) grabbed the bottom of his apartment door, PO Choi allegedly kicked him in the head twice next to his left ear. In his photo viewing, § 87(2)(b) identified PO Choi as the officer who kicked him in his head, but he did not allege being kicked in his initial two IAB complaints.

PO Choi, PO Talio, PO Peters, and Sgt. Dean corroborated that § 87(2)(b) was never restrained on the ground and they all denied dragging § 87(2)(b) on the ground. All of the officers corroborated that once § 87(2)(b) was informed that he was going to be transported to the hospital, § 87(2)(b) fell to the ground on his own accord claiming that he could not stand any longer or that his legs had given out due to his disability. PO Choi, PO Peters, and PO Talio corroborated that all of the officers present attempted to pick § 87(2)(b) up from the ground, but they were unable to do so. The officers had § 87(2)(b) sit on the ground until the EMTs brought a wheelchair and all of the officers assisted in picking § 87(2)(b) up and placing him in the wheelchair. Sgt. Dean indicated that the EMTs picked § 87(2)(b) up from the ground, but did not recall any officers assisting in picking § 87(2)(b) up. All of the aforementioned officers also corroborated that there was no struggle with § 87(2)(b) while he was on the ground and that § 87(2)(b) was actually cooperative and not physically resistant throughout the incident.

PO Choi denied kicking § 87(2)(b) head or any part of his body during the incident. PO Peters, PO Talio, and Sgt. Dean corroborated that PO Choi did not kick § 87(2)(b) and they did not observe any other officer kick § 87(2)(b) at any time during the incident.

§ 87(2)(b) did not allege being dragged on the ground during his initially two IAB complaints or during his CCRB phone statement. § 87(2)(b) acknowledged being physically and verbally resistant against the officers throughout the incident and did not want to be transported to the hospital, so much so that he grabbed the bottom of his apartment door so he could not be allegedly dragged out of his apartment. Based on § 87(2)(b) and the officers' statements, it is plausible that as the officers were attempting to pick § 87(2)(b) up, his body may have dragged on the ground. Due to § 87(2)(b)'s lack of credibility and inconsistent statements, it is also plausible that § 87(2)(b) exaggerated how far he was allegedly dragged.

As has been discussed in the aforementioned allegations, § 87(2)(b) did not sustain any documented injuries and did not complain of injuries or pain to the EMTs or medical personnel at § 87(2)(b) Hospital. § 87(2)(b) sustained no redness, swelling, or bruising to his body or head

even though he was allegedly dragged ten feet on the ground and kicked twice near his left ear.

§ 87(2)(g)

Allegation I – Discourtesy: Sgt. Joseph Dean spoke discourteously to § 87(2)(b)

Allegation J – Discourtesy: PO Bennett Choi spoke discourteously to § 87(2)(b)

Allegation K – Discourtesy: PO Matthew Peters spoke discourteously to § 87(2)(b)

Allegation L – Discourtesy: PO Frank Talio spoke discourteously to § 87(2)(b)

As discussed in the Explanation of Subject Officer Identification, the investigation confirmed that Sgt. Dean, PO Choi, PO Talio, and PO Peters were the only officers who responded and interacted with § 87(2)(b) during the incident and as such, the discourtesy allegations will be pleaded against all of the officers.

In § 87(2)(b)'s first IAB complaint, he alleged "PO Mitchell" told him, "Not taking any fucking report" and "Get ass back inside." § 87(2)(b) did not allege any discourtesies in his second IAB complaint. In § 87(2)(b)'s CCRB phone statement, an unidentified officer told him to "Shut the fuck up. You're a fucking liar." Sgt. Dean then stated, "Shut the fuck up. It can be done the hard way or easy way" followed by PO Choi stating, "Shut the fuck up."

During his CCRB statement, § 87(2)(b) alleged that when officers first arrived at his home and he answered his front door, Sgt. Dean allegedly told him, "It's you again fucker. Don't call us" and "You again calling the precinct. You give my guys a lot of fucking problems with your bullshit." § 87(2)(b) also alleged that Sgt. Dean told him he would throw § 87(2)(b) in the nutcracker house if he kept calling the precinct for "bullshit." After the officers spoke to the landlord and returned to § 87(2)(b)'s front door, an unidentified officer told § 87(2)(b) "Open the door asshole." Once the officers entered § 87(2)(b)'s apartment, PO Choi allegedly stated, "I've been here motherfucker. What the fuck is your problem that you're calling us for bullshit?" An unidentified officer then told § 87(2)(b) "You're calling us for bullshit and you're an asshole" and the officer "didn't want to hear shit." Before allegedly striking § 87(2)(b) a second time with the asp, PO Choi allegedly told § 87(2)(b) "Don't talk to me, I'm a cop. Shut the fuck up." When § 87(2)(b) yelled out that he could not breathe, PO Choi allegedly told him, "Shut the fuck up." The unidentified officer who sat on § 87(2)(b)'s neck stated, "How's it feel not to listen, you big head."

During § 87(2)(b)'s photo viewing, he identified Sgt. Dean as the officer who stated, "How you like that fuck head," identified Lt. Goldsborough as the officer who stated, "Trying to be a wise ass," identified PO Talio as the officer who stated, "Take that bastard," identified PO Jaffe as the officer who stated, "You stay here motherfucker," identified PO Peters as the officer who stated, "Big head motherfucker," and identified Lt. Dipreta as the officer who stated, "Get the fuck out of this neighborhood, and called § 87(2)(b) a "delusional bastard" and "fucking rat to IAB."

Sgt. Dean, PO Choi, PO Peters, and PO Talio denied making the aforementioned discourteous statements towards § 87(2)(b) and denied using any profanity against § 87(2)(b) during the incident. None of the officers overheard any other officer using profanity against § 87(2)(b) on the incident date.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation M – Abuse of Authority: PO Matthew Peters searched § 87(2)(b) of § 87(2)(b) in Queens.

During § 87(2)(b)'s sworn CCRB statement, he alleged that while he was on the ground, the officer who later sat on his neck had been searching his couch and inside his kitchen. § 87(2)(b) did not allege his apartment was searched during his initial two IAB complaints nor during is CCRB phone statement and photo viewing.

PO Choi stated that before escorting § 87(2)(b) out of the apartment to the ambulance, the officers asked § 87(2)(b) where his house keys were so he could get back into his apartment. After § 87(2)(b) informed the officers that his house keys were inside his jean pocket in his bedroom, PO Peters went into § 87(2)(b)'s bedroom and searched for the house keys, but he did not find them. PO Choi visually searched the table in the living room, but did not find the house keys either. Eventually, the officers asked the landlord to open § 87(2)(b)'s apartment door once he returned from the hospital.

PO Talio indicated that besides checking § 87(2)(b)'s back door for evidence of a forced entry, he did not observe any officers search inside § 87(2)(b)'s apartment and made no mention of a conversation regarding obtaining § 87(2)(b)'s house keys. Sgt. Dean also did not recall any conversation about § 87(2)(b)'s house keys, denied searching § 87(2)(b)'s apartment for his house keys, and did not observe any officer conduct a search inside § 87(2)(b)'s apartment.

Meanwhile, PO Peters stated that before escorting § 87(2)(b) to the ambulance, § 87(2)(b) was searched and his house keys were not found on him. PO Peters did not recall if § 87(2)(b) stated that he did not have his house keys, but PO Peters told § 87(2)(b) that he needed to lock the apartment door since he would be going to the hospital. PO Peters indicated that he, Sgt. Dean, PO Choi, and PO Talio conducted a visual search of the apartment because the officers wanted to lock the apartment door before § 87(2)(b) was transported to the hospital. PO Peters acknowledged that he saw § 87(2)(b)'s house keys on a chair or the couch in the living room and he personally locked § 87(2)(b)'s apartment door.

§ 87(2)(b) never mentioned having a conversation about his house keys or requesting the officers to find his house keys during any of his IAB and CCRB statements. In his sworn CCRB statement, § 87(2)(b) could only recall that the officer who sat on his neck had been searching his couch and kitchen area. Even though PO Peters identified himself as the only officer who physically searched and obtained § 87(2)(b)'s house keys, § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b).

Allegation N – Abuse of Authority: An officer threatened § 87(2)(b) with the use of force.

During his sworn CCRB statement, § 87(2)(b) alleged that at an unknown time after he was transported to § 87(2)(b) Hospital, the unidentified officer who sat on his neck during the incident had visited him in the hospital and told him, “You want some more of me? You want to call IAB? Oh you’re still a tough guy? You call IAB and security is going to take care of you because I gave them the word that you are a rat and you like to snitch on the police department.”

PO Choi stated that no officers escorted § 87(2)(b) to § 87(2)(b) Hospital, but he did recall § 87(2)(b) stating that he was going to file complaints with the CCRB and IAB. PO Talio corroborated that no officers went with § 87(2)(b) to § 87(2)(b) Hospital and he had no knowledge of any officers having visited § 87(2)(b) at the hospital after the incident. PO Peters stated that PO Choi and PO Talio had escorted § 87(2)(b) to § 87(2)(b) Hospital, but he did not know if the officers remained at the hospital with § 87(2)(b) and he did not know if § 87(2)(b) made any statements about filing a civilian complaint. Sgt. Dean corroborated PO Peters statement that PO Choi and PO Talio escorted § 87(2)(b) to § 87(2)(b) Hospital, but he had no knowledge of any officers having threatened § 87(2)(b) with the use of force if he filed a civilian complaint.

§ 87(2)(b) did not allege that he was threatened with the use of force when he initially filed his two IAB complaints or during his CCRB phone statement. In his photo viewing, § 87(2)(b) identified PO Shackel as the officer who told the hospital security officers to “fuck with him all night,” identified PO Talio as the officer who called § 87(2)(b) a “rat” after § 87(2)(b) stated he was going to call IAB, and identified Lt. Dipreta as the officer who stated, “You’re a fucking rat to IAB.” As was discussed in § 87(2)(b)'s CCRB History, nearly all of § 87(2)(b)'s prior complaints included threat of force allegations related to § 87(2)(b) threatening to file complaints against officers.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b).

Squad: 6

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date